

Docket No.: 068911-0075

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**


In re Application of : Customer Number: 23,630  
*John G. Babish et al.* :  
 : Confirmation Number: 5630  
Application No.: 10/789,814 : Group Art Unit: 1617  
 :  
Filed: Feb. 27, 2004 : Examiner: KANTAMNENI, Shobha  
 :  
For: SYNERGISTIC AND ANTIINFLAMMATORY PHARMACEUTICAL  
COMPOSITIONS AND METHODS OF USE

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Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this correspondence is being electronically-transmitted to the  
United States Patent and Trademark Office on July 01, 2009

  
Jacqueline Andreu

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED**  
**UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Sir:

Applicants requests revival of the above-identified application, which was unintentionally abandoned.

A response to Final Office Action was timely filed in the above-referenced application before the statutory bar date (May 5, 2009) for such response; however, the terminal disclaimers necessary to complete the response were disapproved by the Patent Office because the agent who signed the terminal disclaimers was not of record. Please see the 06/08/2009 Advisory Action, a copy of which is submitted herewith in Appendix A.

Applicants hereby submit that at no time was there intent to cause the application to become abandoned and that the error in the terminal disclaimers was unintentional.

A new Power of Attorney and the required terminal disclaimers are concurrently being filed with this petition. Copies of the Power of Attorney and the terminal disclaimers are

**Application No.: 10/789,814**

included herewith in Appendix B.

The Examiner is invited to call the undersigned agent if there are any questions.

Please charge Deposit Account No. 50-1133 the amounts of \$1,620.00, required under 37 C.F.R. § 1.17(m), to the cover the petition fee, and \$280.00, required under 37 C.F.R. § 1.20(d), to cover the fee for the terminal disclaimers. The Commissioner for Patents is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1133 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in black ink, appearing to read 'Atabak R. Royae', is written over a horizontal line.

Atabak R. Royae  
Registration No. 59,037

28 State Street  
Boston, MA 02109  
Phone: 617-535-4108  
Facsimile: 617-535-3800  
Date: July 01, 2009

**Please recognize our Customer No. 23,630  
as our correspondence address.**

# APPENDIX A



## UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

JUN 15 2009

MW &amp; E

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10/789,814	02/27/2004	John G Babish	068911-0075	5630

7590 06/08/2009  
Simona A Levi\_Minzi PH.D ,JD  
Mcdermott Will Emery LLP  
201 S. Biscayne Boulevard, ste.2200  
Miami, FL 33131

EXAMINER
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KANTAMNENI, SHOBHA

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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06/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

McDermott Will &amp; Emery LLP

Re: \_\_\_\_\_  
Action Date: \_\_\_\_\_  
Action Due: \_\_\_\_\_  
Docketed By: *AF* Date: *6/1/09*

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/789,814

Applicant(s)

BABISH ET AL

Examiner

Shobha Kantamneni

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE

1 ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 6 months from the mailing date of the final rejection

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2 ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3 ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_ (See 37 CFR 1.116 and 41.33(a))

4 ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324)

5 ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_

6 ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7 ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 4-7

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8 ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9 ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10 ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11 ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see page 2.

12 ☐ Note the attached Information Disclosure Statement(s) (PTO/SB/08) Paper No(s) \_\_\_\_\_

13 ☐ Other: \_\_\_\_\_

/SREENI PADMANABHAN/  
Supervisory Patent Examiner, Art Unit 1617

Continuation of 11:

Applicant's arguments that "the claims 1,8,9,13,14,18,21-27,152 in application No. 10/464,410 do not render obvious the claims in the instant application" are persuasive. The rejection of claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,8,9,13,14,18,21-27,152 of copending Application No. 10/464,410 made in the final office action dated 11/05/2008 is herein withdrawn.

Applicant's arguments that "the claims 1, 35-36, 39-40 in application No. 10/464,834 do not render obvious the claims in the instant application" are persuasive. The rejection of claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 35-36, 39-40 of copending Application No. 10/464,834 made in the final office action dated 11/05/2008 is herein withdrawn.

Applicant's arguments that "the claims 91-97,99-102,105-109 in application No. 11/344,555, the claims 110-134 of application No. 11/344,556, the claims 51,116-131 of application No. 11/344,557, the claims 35-46 of application No. 11/403,034, the claims 1-12 of 10/789817" do not render obvious the claims in the instant application" are persuasive. The rejection of claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 11/344,555, 11/344,556, 11/344,557, 11/403,034, 10/789817 made in the final office action dated 11/05/2008 is herein withdrawn.

The rejection of Claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Applications 11/344552, 11/344554, made in the final office action dated 11/05/2008 are MAINTAINED. Note the terminal disclaimers provide by the applicant are disapproved by the office because attorney is not of record/POA required.

**Application No.: 10/789,814**

# **APPENDIX B**

<b>POWER OF ATTORNEY OR REVOCATION OF POWER OF ATTORNEY WITH A NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS</b>	Application Number	10789,814
	Filing Date	02/27/2004
	First Named Inventor	John G. Babish et al.
	Title	Synergistic Anti-Inflam . . .
	Art Unit	1817
	Examiner Name	Kanlammant, Shobha
	Attorney Docket Number	068911-0075

I hereby revoke all previous powers of attorney given in the above-identified application.

☐ A Power of Attorney is submitted herewith.

OR

☒ I hereby appoint Practitioner(s) associated with the following Customer Number as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

23,630

OR

☐ I hereby appoint Practitioner(s) named below as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

Practitioner(s) Name	Registration Number

Please recognize or change the correspondence address for the above-identified application to:

☒ The address associated with the above-mentioned Customer Number.

OR

☐ The address associated with Customer Number:

OR

☐ Firm or Individual Name

Address

City

State

Zip

Country

Telephone

Email

I am the:

☐ Applicant/Inventor

OR

☒ Assignee of record of the entire interest See 37 CFR 3.71 Statement under 37 CFR 3.73(b) (Form PTO/SB/06) submitted herewith or filed on \_\_\_\_\_

SIGNATURE of Applicant or Assignee of Record

Signature	<i>Dennis Emma</i>	Date	6/23/09
Name	DENNIS Emma	Telephone	253-853 7267
Title and Company	Dir. Intel. Prop - Metaproteomics LLC		

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 2 forms are submitted

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2